IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13514 OF 2005

Date of Decision: 06.11.2006

Ms. Prabhjot Kaur

... Petitioner

Versus

State of Punjab and others.

.. Respondents

CORAM : Hon'ble Mr. Justice J.S. Khehar,
Hon'ble Mr. Justice S.D. Anand.

Present : Mr. Kapil Kakkar, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Additional Advocate General, Punjab,
with Mr. B.S. Chahal, Assistant Advocate General, Punjab,
for respondent Nos.1 to 3.

J.S.Khehar, J.(Oral)

The petitioner's mother responded to an advertisement dated 18.05.1992 for appointment against the post of Social Studies Mistress. On the culmination of the process of selection, the petitioner's mother was offered appointment as Social Studies Mistress at the Government Middle School, Lohian, District Jalandhar by an order dated 07.03.1995. It is the case of the learned counsel for the petitioner, that the petitioner's mother was medically examined before she assumed her duties on regular basis as Social Studies Mistress at Government Middle School, Lohian, District Jalandhar.

The selection and appointment of the petitioner's mother as Social Studies Mistress, was challenged through Civil Writ Petition No. 5985 of 1994 inter alia on the ground, that the appointment of the petitioner's

mother was in excess of the advertised posts. It is not a matter of dispute, that the selection and appointment of the petitioner's mother as Social Studies Mistress on regular basis came to be set aside in Civil Writ Petition No. 5985 of 1994.

Consequent upon the termination of the services of the petitioner's mother in terms of the directions by this Court in Civil Writ Petition No. 5985 of 1994, the State Government took a policy decision to appoint the petitioner's mother, and all other similarly situated as her on 89 days basis on account of the exigency involved in the Department of Education. Consequently, the petitioner's mother was offered the post of Social Studies Mistress on 89 days basis, vide an order dated 18.09.1999. According to the averments made in the pleadings, she assumed her duties as such, on 20.09.1999. Unfortunately, she died well before she had completed one year service, on 02.01.2000.

Through the instant writ petition, the petitioner claims family pension on account of the service rendered by her mother under rule 6.17 of the Punjab Civil Services Rules, Volume II. A relevant extract of Rule 6.17 is reproduced hereunder:-

> "6.17. The provision of this rule shall apply:
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> (a) to a regular employee of Punjab Government in a pensionable establishment on or after the 1st July, 1964; and
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> (b) to a Punjab Government employee who was in service on the 30th June, 1964 and came to be governed by the provisions of Family Pension Scheme, 1964, for Punjab Government employees.
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> Note-- In the case of a Government employee who retired from

service or died at any time before the publication of this rule, the provisions of Family Pension Scheme, 1964, as in force on the date that Government employee retired or died shall apply.

(1) The following family pension benefits are admissible to the family of a deceased employee:-

Pay of the Government employees	Monthly pension of widow/ widower/children
(a) Below Rs.400	30% of pay subject to a minimum of Rs.60 and maximum of Rs.100.
(b) Rs.400 and above but below Rs.1,200	15% of pay subject to a minimum of Rs.100 and maximum of Rs.160
(c) Rs.1,200 and above	12% of pay subject to a minimum of Rs.160 and a maximum of Rs.250.

`Pay' for this purpose means the pay as defined in rule 2.44 of Punjab Civil Services Rules, Volume I, Part I, which the person was drawing on the date of his death while in service or immediately before his retirement. If on the date of his death while in service or immediately before his retirement, a person has been absent from duty on leave (including extraordinary leave) or under suspension. `Pay' means the pay which he drew immediately before proceeding on such leave or suspension. The term `pay' shall also include `dearness pay'.

The amount of family pension shall be fixed at monthly

rates and be expressed in whole rupee and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee:

Provided that in no case a family pension in excess of the maximum determined under this rule shall be allowed.

(2) The Scheme will be administered as below:-

(i) The family pension will be admissible in case of death while in service or after retirement if at the time of death the retired Government employee was in receipt of a compensation, invalid, retiring or superannuation pension. In case of death while in service, the Government employee should have completed a minimum period of one year of continuous service, without break. The family pension will not be admissible in cases of death after retirement, if the retired employee at the time of death was in receipt of gratuity only.

(ii) The terms "One Year Continuous Service" used in Clause (i) is inclusive of permanent and temporary service in a Pensionable establishment and any period of leave including Extraordinary leave but does not include Boy Service and suspension period unless that is regularised by the competent authority.

(iii) In the case of persons who are transferred to Punjab State from the Central Government or other State Governments and in whose case it has been agreed to count their previous service for pension the Family Pension Scheme would be applicable in the event of their death/retirement without putting in one year

continuous service under the State Government, if their total service at the time of death (inclusive of service rendered under the previous Government) exceeds one year.

(3) "Family" for purposes of this Scheme will include the following relatives of the Government employee:-

(a) wife in the case of a male Government employee and husband in the case of a female Government employee;

(b) a judicially separated wife or husband, such separation not being granted on the ground of adultery, provided the marriage took place before the retirement of the Government employee and the person surviving was not hold guilty of committing adultery; and

(c) minor sons; and

(d) unmarried daughters below the age of 21 years."

It is the vehement contention of the learned counsel for the petitioner, that the petitioner cannot be denied family pension on account of the fact, that her mother had rendered service for a period of less than one year. For the aforesaid purpose, learned counsel for the petitioner has placed reliance on proviso under rule 6.17(2)(i), by asserting that it is not imperative in the case of the petitioner to require a minimum year of service before entitlement of family pension on account of the fact, that the mother of the petitioner was medically examined and declared fit, at the time of her entry into service, consequent upon her selection and appointment by the order dated 7.3.1995.

Mr. B.S. Chahal, Assistant Advocate General, Punjab, vehemently contends that the petitioner is not entitled to family pension on account of the fact, that the mother of the petitioner was not a regular

employee of the State Government. It is pointed out that rule 6.17 is applicable only to regular employee of the State Government. While conceding that the petitioner's mother was appointed on regular basis by an order dated 7.3.1995, it is submitted, that the appointment of the petitioner's mother on regular basis was set aside by an order dated 13.11.1997 passed by the respondents, consequent upon the decision rendered by this Court in C.W.P. No. 5985 of 1994. It is, therefore, vehemently contended, that the appointment of the petitioner's mother thereafter commenced only with effect from 20.09.1999 (consequent upon the issuance of the appointment letter dated 18.9.1999), which was only on 89 days basis, keeping in mind the exigency of the Department of Education. Since, the appointment of the petitioner's mother was not on regular basis, the benefit of family pension could not flow to her family members after her death on 02.01.2000.

Having perused the opening words of rule 6.17 of the Punjab Civil Services Rules, Volume II, we are satisfied, that it has been expressly mentioned therein that family pension is payable only to the members of the family of a deceased employee of the Punjab Government. Since the mother of the petitioner was not a regular employee of the Punjab Government, as already noticed herein above, we are of the view that the petitioner is not entitled to family pension.

It would be pertinent to mention, that while canvassing the claim of the petitioner, learned counsel for the petitioner relied upon the decision rendered by a Division Bench of this Court in Rama Devi versus State of Haryana and others, 2005(3) Service Cases Today, 604 and by yet another Division Bench of this Court in Smt. Shalini Devi versus Haryana Vidyut Prasaran Nigam Ltd. and others, 2006(1) Service Cases Today, 383.

It is further not possible for us to accept the conclusions drawn therein as rule 6.17 of the Punjab Civil Services Rules, Volume II, did not arise for consideration in the judgments relied upon by the learned counsel for the petitioner.

Besides family pension, the petitioner also claims death gratuity under rule 6.16 (C) of the Punjab Civil Services Rules, Volume II. Relevant part of Rule 6.16 (C) is being extracted hereunder:-

> "6.16-C. (a) The following benefits are permissible in respect of temporary Government employees:
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> (1) Terminal Gratuity:- A temporary Government employee who is discharged on account of retrenchment or is declared invalid for further service, will be eligible for a gratuity at the rate of 1/3rd of a month's pay for each completed year of service provided he has completed not less than 5 years' continuous service at the time of retirement/discharge/invalidment.
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> (2) Death-Gratuity-- The family of a temporary Government employee who dies while in service will be eligible for death gratuity on the scale subject to the conditions specified below:-
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> (a) On death after completion of one year's service but before completion of three years' service, a gratuity equal to one months pay.
>
> (b) On death after completion of three years' service but before completion of five years, a gratuity equal to two months' pay;
>
> (c) On death after completion of five years' service or more, a gratuity equal to three months' pay or the amount of the terminal

gratuity mentioned in clause (1) if it is greater."

A perusal of the aforesaid rule undoubtedly reveals, that death gratuity is payable to the family of even a temporary Government employee, but a close perusal of the rule reveals that it is subject to three conditions, the first condition being, that the employee should have completed one year temporary service. The admitted factual position in the present controversy is that the petitioner's mother was appointed on 89 days basis by an order dated 18.09.1999 and she assumed her duties as such on 20.09.1999. Having rendered service for a few months, she died on 2.1.2000. It is, therefore, apparent that the petitioner's mother did not serve even on temporary basis for a period of one year. We are, therefore, of the view that the petitioner is not entitled to death gratuity on account of the service rendered by her mother.

The third contention of the learned counsel for the petitioner is based on the averments made in paragraph No.6 of the written statement. Paragraph No.6 of the written statement is being extracted hereunder:-

> "6. That the contents of this para as alleged are incorrect hence denied. It is submitted that the mother of the petitioner was appointed on regular basis. As submitted in preliminary submissions, the initial selection and appointment of the mother of the petitioner was struck down by this Hon'ble Court along with some similarly situated persons. Later on, in compliance of the interim order of this Hon'ble Court passed in C.W.P. No. 8457 of 1999 – Sandeep Kumari and others Vs. State of Punjab and others, the mother of the petitioner was appointed purely on temporary basis vide order No. 2/35/99-E.2(4,5,6) dated

18.9.1999 in pursuance of the Punjab Recruitment of Teachers Ordinance, 1999 promulgated by the Governor of Punjab on 8th June, 1999. A copy of appointment letter is at Annexure P-2. In complying with the order of this Hon'ble Court, a following condition was mentioned in the appointment letter at serial No.1:-

> "This offer shall be on purely temporary basis and shall not confer any right on the appointed candidate to claim regularisation of services, confirmation or seniority till the final decision of the writ petition. This offer would continued till the final decision of Hon'ble High Court to be given in C.W.P. No. 8457 of 1999.
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> The said writ petition is still pending adjudication of this Hon'ble Court. It is worth mentioning here that while passing order dated 3.5.2005 (Annexure P-13), which is under challenge in this petition, it had been mentioned in it that in case the petitioners of C.W.P. No. 8457 of 1999 succeed and ultimately their services are regularised antedated the case of the petitioner is liable to be reviewed accordingly."

On the basis of the aforesaid averments, it is the contention of the learned counsel for the petitioner, that the respondents treated the mother of the petitioner as a regular government employee. It is not possible for us to accept the aforesaid contention of the learned counsel for the petitioner, on the basis of the factual position indicated in the pleadings extracted above.

It is also the case of the petitioner, that she should be released a

sum of Rs. One lac on account of ex-gratia grant. Learned counsel for the petitioner, for the instant issue relied on rule 2.7 of the Punjab Civil Services Rules, Vol.II, relevant part whereof is being extracted hereunder:

> "EX-GRATIA GRANT
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> 6. Ex-gratia grant admissible vide Rule 2.7 of Punjab Civil Services Rules Vol.II to members of family of an employee who dies in harness shall be paid at the rate of Rs.50,000/- on a uniform basis. It has also decided that the employee who, while in service are permanently disabled and rendered unfit for further service shall also be given ex-gratia grant at the rate of Rs.50,000 on a uniform basis."

The aforesaid rules reveals, that ex-gratia grant was uniformly granted to the family members of an employee, who died in harness at the rate of Rs.50,000/-. The aforesaid ex-gratia grant was, however, revised on the basis of instructions dated 24.01.2001. Relevant part whereof is being extracted hereunder:-

> "Letter No. 2/19/2000-3FPPC/641 dated 24.1.2001.
>
> Subject: Implementation of the recommendation of the IVth Punjab Pay Commission regarding extraordinary Pension and Awards.
>
> I am directed to invite a reference of Department of Finance circular No. 1/7/98-1FPIII/10006, dated 14.9.98 on the subject cited above.
>
> 2. The question of giving some more financial relief to the government employees who die in harness and death occurs due to causes attributable to service i.e. for reasons which are

directly or substantially connected with the performance of official duties and is clearly relatable to performance of such duties, has been under consideration of the State Govt. After careful consideration it has been decided that amount of ex-gratia Grant in such cases shall be equal to 24 times the basic pay of the government employee on the date of his/her death with a minimum limits of Rs1.00 lac and maximum limit of Rs.3.00 lacs."

Learned counsel for the petitioner vehemently contends, that the petitioner should be paid a sum of Rs. One lac as ex-gratia grant on account of the death of mother of the petitioner in harness on the basis of instructions dated 24.1.2001 extracted herein above. It is not possible for us to accept the instant contention of the learned counsel for the petitioner on account of the fact that the petitioner's mother died on 2.1.2000 i.e. well before the revised ex-gratia grant was implemented on the basis of the policy instructions dated 24.1.2001.

For the reasons recorded above, we find no merit in this case and the same is accordingly dismissed.

(J.S. Khehar)
Judge

November 06, 2006
vkd

(S.D. Anand)
Judge